

**Fair Political Practices Commission**  
**MEMORANDUM**

**To:** Chairman Johnson and Commissioners Hodson, Huguenin, Leidigh, and Remy

**From:** Hyla P. Wagner, Senior Commission Counsel  
Scott Hallabrin, General Counsel

**Subject:** Committee Names – Prenotice Discussion of Amendments to Regulations 18402 and 18450.3

**Date:** September 30, 2008

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Proposed Commission Action: Approve for public notice the amendment of Regulations 18402 and 18450.3 concerning committee names. The proposed changes would add the candidate's name, office sought, and year of the election to certain committee names. The changes also require that the names of the economic or special interest of the top donors included in the names of certain ballot measure committees be listed in descending order based on the amount contributed by the donor.

Background: Included on political mailings and advertisements, committee names provide important information to voters.<sup>1</sup> Section 84102 requires a committee to state its name, address, principal officers, and other fundamental information on its statement of organization. Implementing this section, Regulation 18402 sets forth certain requirements for committee names.

In addition, the advertisement disclosure provisions of the Act contain committee name identification rules for certain ballot measure committees. Section 84504 of the Act requires that "[a]ny committee that supports or opposes one or more ballot measures shall name and identify itself using a name or phrase that clearly identifies the economic or other special interest of its major donors of . . . \$50,000 or more . . . ." Regulation 18450.3 implements the committee name identification requirement. Following litigation,<sup>2</sup> Regulation 18450.3 was amended to state that it only applies to committees *primarily formed* to support a particular measure, but does not apply to *general purpose* committees.

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<sup>1</sup> Kang, Michael S., "Democratizing Direct Democracy: Restoring Voter Competence Through Heuristic Cues and 'Disclosure Plus,'" 50 UCLA L. Rev. 1141 (2003).

<sup>2</sup> The case *California Republican Party; California Democratic Party v. FPPC*, 2004 U.S. Dist. LEXIS 22160 (E.D. Cal. October 27, 2004) established that related advertisement disclosure provisions requiring the top two donors to ballot measure committees to be listed on broadcast ads do not apply to political party committees which are general purpose committees. In addition, the Ninth Circuit case, *American Civil Liberties Union of Nevada v. Heller*, 378 F.3d 979 (9<sup>th</sup> Cir. 2004) struck down a Nevada statute requiring on-publication identification of contributors to committees for political advertisements, on the ground that the statute impermissibly infringed on the committee's First Amendment rights. In light of these cases, the Commission interpreted the advertisement disclosure provisions *not to apply* to a general purpose committee.

The proposed amendments to the committee name regulation and the ballot measure name identification regulation are discussed below.

Regulation 18402 - Committee Names. To increase the utility and clarity of campaign committee names, the following five changes to Regulation 18402 are proposed.

1. *Include the candidate's name in all controlled committees' names.* A candidate is currently required to include his or her name in an election committee, officeholder committee, legal defense committee, and recall committee, under various existing regulations. Adding the language to paragraph (c)(1) makes it clear that the name of the candidate shall be included in all the candidate's controlled committees. The proposed language would also add the candidate's name to the name of a candidate-controlled ballot measure committee. Having the candidate's name in all candidate-controlled committees adds greatly to public disclosure and makes it easy to retrieve all the candidate's committees when the public searches a candidate's campaign reports in the Secretary of State's Cal Access system.

2. *For candidate election committees, include the office sought and year of the election in committee name.* Candidates are required to form one committee per election under the one bank account rule, the Act's contribution limits, and the committee termination rules.<sup>3</sup> As a result, a candidate may have several committees in existence from recent or future elections, making it confusing for the public and agency staff to know which committee relates to which election. Adding the office sought and year of election to the committee name in paragraph (c)(2), links the committee to a particular election, providing better public disclosure and assisting in tracking the contribution limits.

3. *Additional disclosure in the names of independent expenditure committees supporting or opposing candidates.* Committees set up to make independent expenditures for or against candidates are often the most difficult for the public to identify. The proposed language in paragraph (c)(3) would require that a committee primarily formed to support or oppose the election of a candidate must include the last name of the candidate the committee supports or opposes, the office sought, year of the election, and state whether the committee supports or opposes the candidate. For example, "Sun City Residents against Smith for Council 09."

4. *Other committee name requirements.* For convenience, paragraph (c)(4) lists provisions concerning committee names found in other sections of the Act and regulations.

5. *Committee Identification Number.* Paragraph (c)(5) requires committees that file electronically with the Secretary of State to include their committee identification number at the end of their name in the "committee name" field of their electronic reports. This provision does not apply to committees controlled by candidates for their election. When preparing the Commission's June 2008 report analyzing independent expenditures, it was sometimes difficult for Commission analysts to ascertain where committee funds used for independent expenditures had come from. Adding the committee identification number at the end of the name field in

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<sup>3</sup> Sections 85201, 85301 and Regulation 18404.

electronic reports will assist in identifying committees whose names have changed and improve the disclosure of campaign funds transferred from one committee to another.

The language marked in strike-out about ballot measure names in Regulation 18402 (existing paragraphs (c)(3)(A) and (B)) is not being deleted, but is being moved to Regulation 18450.3 because that regulation specifically addresses ballot measure committee names.

Regulation 18450.3. Committee Name Identification. Advertisement Disclosure.

The added introductory language in subdivision (a) and the language in paragraph (c)(3) about disclosing the common employer of major donors is not new; it is moved from Regulation 18402. Paragraph (b)(4) contains the change requiring the economic/special interest of the \$50,000 donors to be listed in descending order. Listing the economic interests/donors in descending order of the amount of contributions they have made to the committee will improve disclosure in ballot measure committee names. Legislation introduced in 2008 (AB 2552), but not passed, contained a similar provision requiring the economic or special interests of donors to be listed in descending order.

Paragraph (b)(5) requires that the ballot measure committee name be updated periodically. If the economic or special interests of the \$50,000 donors must be listed in descending order, the committee name will have to be updated to accurately reflect the economic/special interest of the top donors. Some primarily formed ballot measure committee's names will change during the election period as a result. However, many ballot measures are sponsored and funded by several large donors and the names of these committees are not likely to change.

Recommendation: Staff recommends that the Commission approve for public notice the proposed amendments to Regulations 18402 and 18450.3 concerning committee names.

Attachments:

- 1 – Regulation 18402
- 2 – Regulation 18450.3